

# Public Health Emergency Law

CDC Foundational Course for Front-line Practitioners

Developed by

**U.S. Centers for Disease Control and Prevention**



1



## Public Health Emergency Law

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- Unit 1: Course Introduction and Basic Concepts
- Unit 2: Legal Issues: Detecting and Declaring Emergencies
- Unit 3: Emergency Powers I: Protection of People
- Unit 4: Emergency Powers II: Management of Property
- **Unit 5: Emergency Powers III: Mobilizing Professional Resources**
- Unit 6: Advanced Issues Seminar



# Public Health Emergency Law

## CDC Foundational Course for Front-line Practitioners

### **Unit 5** **Using Emergency Powers III:** **Mobilizing Professional** **Resources**



## Disclaimer

These course materials are for instructional use only and are not intended as a substitute for professional legal or other advice. While every effort has been made to verify the accuracy of these materials, legal authorities and requirements may vary from jurisdiction to jurisdiction. Always seek the advice of an attorney or other qualified professional with any questions you may have regarding a legal matter.



## Unit 5 Objectives

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By the end of this unit, participants will be able to:

1. Identify emergency sources of personnel
2. Understand how to access emergency sources of personnel -- and related legal considerations
3. Understand how potential legal and practical limitations might affect use of emergency sources of personnel



Instructor's Note: *This is an essential slide, as the objectives frame the order of content included in this unit.*

## Objective 5.1

# Identify Emergency Sources of Personnel



## *Hypothetical Example (Cont.)*

### *Recall from Previous Unit:*

- Arrangements were made to establish several medical treatment facilities and drug distribution centers – in armories, schools, and a tent city
- Equipment and drugs have been requisitioned and are being delivered

### ***BUT***

Most local public health and medical personnel are already either

- Treating patients in the pre-existing hospitals & clinics
- Sick themselves and unable to report



## *Hypothetical Example (Cont.) National Response Plan Deployed*

For incidents of this magnitude:

- State and federal emergencies declared
- Joint Field Office established
  - Principal Federal Official
  - Federal and State Coordinating Officers
- HHS coordinating all federal health response actions under ESF 8
  - State health counterpart coordinating state health response actions
  - **NOTE: Onsite Incident Commander retains authority – has system to obtain resources**



8



- Given both the duration and scale of the emergency at this point – one can assume that the Governor and the President have made the declarations that were discussed earlier in this course.
  - This incident would be deemed an Incident of Federal Significance
  - The governor would have activated state emergency plans and declared a public health emergency
  - The President will have declared a Stafford Act emergency and the Secretary of DHHS would have declared a public health emergency
  - Joint field offices (JFOs) will have been established to coordinate state and federal response
  - Although all activities are to be coordinated through the Joint Field Office – there is still substantial flexibility about which agency is actually acting
    - Operational needs are reported to the JFO. Thus, requests for personnel to staff new surge medical facilities are reported through the state or federal health officer in the JFO
    - State and federal health officials in one JFO then seek to identify the location of resources to meet these needs
    - When identified, the JFO would then issue a mission assignment to the state or federal agency or entity managing that resource
    - The agency or entity managing the resource may well have had independent capability and authority to deploy resources on its own.
- Purpose of the mission assignment is dual:
- Coordination through this process minimizes duplication of effort
  - The cost of actions taken under this mission assignment is approved for reimbursement from Disaster Relief Fund.



## Emergency Sources of Personnel: Operational & Logistical Issues

- Before identifying resources, key questions must be answered
  - What categories of personnel are needed?
  - How many in each category are needed?
  - Where are they needed?
  - What equipment will they need?
  - Where can these personnel be found?



9



- What categories of personnel are needed?
  - E.g. MDs, RNs, LPNs, PAs, Pharmacists, Epidemiologists, Medical Administrators
  - Are there specific specialties within the larger categories?
    - E.g. Trauma Surgeons, ER Doctors, ENT
- How many of each category are needed?
  - E.g. We need 100 Trauma Surgeons, 50 Infectious Disease Specialists, 200 OR Nurses
- Where are they needed?
  - E.g. Half to temporary treatment facility A
  - The other half split evenly across the three existing hospitals
- What equipment will they need?
  - Can the equipment come with them, or will it have to be obtained separately?
- Where can these personnel be found?

**Note:** Because it is so important to communicate clearly about what personnel skills are required and what the capabilities are of specific personnel resources available for response, the NIMS integration center is developing a common description of capabilities (resource typing) that would apply nationwide.

Sources to be discussed in upcoming slides.

## Emergency Sources of Personnel: Overview

- Many ways to obtain emergency personnel
  - Options will differ in the legal arrangements for activating payment, **liability**, licensing
- Preparation is key to acquiring personnel in an emergency
  - Make arrangements in advance
  - Test these arrangements through exercises



10



- Arrangements could include
  - Mutual Aid Agreements
  - Memoranda of Understanding with potential partners and providers, such as
    - Private Hospitals
    - Local Nonprofits (e.g. Red Cross)
    - Police, Fire & EMS
  - Discussions with emergency management about processes and procedures for utilizing existing state, federal and volunteer resources

**Instructor:** Testing these arrangements in exercises will allow you to see if additional arrangements need to be made/updated to ensure available resources when truly needed.

## Sources of Potential Liability When Mobilizing Personnel

- Liability for *injuries to* “added” personnel
  - Workman’s Compensation
    - Covers any injury of employee regardless of fault
    - Damages limited (no punitive, non-economic damages)
  - Tort / Negligence Liability:
    - Injured employee sues *other* potential defendants
- Liability to 3rd party for *losses/injuries caused by* “added” personnel



11



**Instructor:** To understand why it is so important to know how new personnel are acquired to aid in an emergency response, note how critical it is to know who the law believes is the employer of the new personnel. The employer will have the potential liability of paying workman’s compensation for any injuries suffered by the employee. Other entities involved in the response – other government agencies, non-profit organizations, and businesses that are working together in the response – are, in many states, not protected by the same liability protection given the employer.

It is also important to know who is responsible for damages ALLEGEDLY caused by the new personnel, and whether the entity with responsibility has sovereign immunity.

The “other” potential defendants referred to in the slide include hospitals, clinics, doctors, nurses, drug providers, anesthesiologists, EMT/Ambulance services, radiologists, etc.

With this background, start to review the potential sources of supplemented personnel.

## Discussion Question

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What are the resources you would  
plan to use in a catastrophic  
health event –  
and how would you obtain them?



12



**Instructor:** The next several slides briefly list the different potential sources from which personnel might be obtained in an emergency.

This slide provides an opportunity for the class to develop these lists based on their own experience.

The basic categories that might emerge from the discussion are:

- Other local governments in state
- State government of own state– various agencies – including National Guard
- Other state governments – including the National Guard of other States
- Local governments or authorities in other states
- Federal government – numerous agencies
- Non-governmental organizations
- Unaffiliated volunteers
- Private businesses/medical practices

## Sources of Emergency Personnel: State & Local Government

- State Employees
  - State public health personnel
  - State hospitals
  - State Police/State EMS
  - National Guard called up by Governor
- Local Government Employees
  - Local public health personnel
  - Municipal hospitals
  - Police / Fire / EMS



13



Instructor's Note, State/Local Laws: *Instructor may substitute slide with information from particular state.*

- Re-assignment and re-deployment of state employees will generally require memoranda of understanding between different state agencies to handle accounting and employment issues.
- Bringing resources from other local governments will be pursuant to intergovernmental agreements – we discuss these mutual aid provisions later in this unit.

## Sources of Emergency Personnel: Federal

- Federal Employees – full-time and surge
  - Public Health Service
  - National Disaster Medical System (NDMS)
  - Department of Veterans Affairs (VA)
  - Department of Defense/Army
  - National Guard (if federalized)



14



**Instructor:** One important potential source of surge personnel is from the federal workforce and the surge federal workforce.

- Surge employees are personnel that are not full-time federal employees but who become federal employees when activated for the response (e.g. similar to military reserves)
- Substantial numbers of the Uniformed Public Health Service personnel are full-time federal employees, with other jobs in HHS or the VA or elsewhere.
- Another good example of surge employees are those in the National Disaster Medical System (NDMS)– see 42 U.S.C.A. § 300hh-11
  - Persons participating in NDMS are made intermittent federal employees
  - Like Military Reservists, they work elsewhere when not deployed as Federal NDMS Responders
  - Persons serving in NDMS need not give their normal employer notice, and have the same re-employment rights available to uniformed military.
- National Guard is listed here even though it is generally not called up for federal service for emergency management. Doing so does not add to total resources available, since the Guard when not in federal service is one of the principal surge sources of emergency personnel available to state governors.

**Note:** The list on the slide by no means covers every possible resource. The Indian Health Service, for example, has 56 hospitals, staffed with Public Health Service Personnel and civilian staff, and pharmacy supply centers, all of which could be utilized in emergency.

## Sources of Emergency Personnel: Non-Government

- Voluntary Organizations – e.g., Red Cross
- Non-governmental “Mutual Aid”
  - Non-profit hospitals, clinics
  - Academic/medical research centers
- For-profit institutions
  - Hospitals, clinics, HMOs, labs, individual doctors or group practices, veterinarians, pharmacists
- Contractors
- Volunteers



15



**Instructor:** While the American Red Cross does not provide general medical services, it does have:

- A cadre of Disaster Mental Health professionals who provide counseling services in emergency situations
  - Disaster Health Services doctors and nurses who can provide certain types of specialized care
  - Other volunteers who can perform non-medical tasks such as mass care, patient assistance, administrative support to vaccination and prophylaxis distribution centers
- Citizen Corps may be run as a government program in some jurisdictions and as a nonprofit in others
- Medical Reserve Corps is a Citizen Corps program consisting of Medical Professionals who make themselves available as medical and public health volunteers in the event of an emergency.

## Sources of Emergency Personnel: Citizen Corps/Medical Reserve Corps

- Citizen Corps: a national set of programs giving volunteer opportunities for public in event of emergency
  - *National programs are under DHS*
  - *State programs under state Citizen Corps Councils*
- Medical Reserve Corps is the Citizen Corps program for medical/public health personnel
  - National program in conjunction with HHS
  - *State/local programs partner public health departments with Citizen Corps Councils*



16



- [Citizen Corps Councils](#) helps drive local citizen participation by coordinating Citizen Corps programs, developing community action plans, assessing possible threats and identifying local resources.
- The [Medical Reserve Corps \(MRC\) Program](#) strengthens communities by helping medical, public health and other volunteers offer their expertise throughout the year as well as during local emergencies and other times of community need. MRC volunteers work in coordination with existing local emergency response programs and also supplement existing community public health initiatives, such as outreach and prevention, immunization programs, blood drives, case management, care planning, and other efforts.
  - The MRC program is administered nationally by HHS.
  - MRC program is significant in National Capital Region (NCR, a federally defined region consisting of D.C. and its suburbs in MD and VA)
    - D.C. MRC is administered through the D.C. Medical Society, under the direction of the D.C. Department of Health, in coordination with the ServeDC and the D.C. Citizen Corps Council
      - Currently over 200 medical professionals are registered with the D.C. MRC
    - Fairfax County, VA has one of the largest county-wide MRCs in the country, with over 2,000 medical and public health professionals available if needed
  - NCR MRC Recruitment goals
    - FY05 -Increase NCR MRC Membership to 3,000, 5,000 by FY07
    - Allow for coordination of MRCs across all NCR jurisdictions
- Other Citizen Corps programs include:
  - The [Community Emergency Response Team \(CERT\) Program](#)
  - [The Fire Corps](#)
  - An expanded [Neighborhood Watch Program \(NWP\) Program](#) incorporating terrorism awareness education and training
  - [Volunteers in Police Service \(VIPS\)](#)
  - All of these can provide some untrained volunteer resources for a major emergency



## Objective 5.2

Understand How to Access  
Emergency Sources of  
Personnel -- and Related  
Legal Considerations



17



## Arrangements for Accessing Emergency Sources of Personnel

### Basic Options:

- Deploy existing local, state & federal employees
- Mutual Aid
  - Intrastate, interstate, regional, international
- Use volunteers
- Hire new state/local personnel
- Contract for services



18



**Note:** Depending on the scale of the incident, choosing just one option may not meet all needs. It may be necessary to activate all options.

**Mutual Aid will be discussed in more detail later. This is merely to introduce the types of mutual aid:**

• **Intrastate Mutual Aid** – one local government to another

• **Interstate and Regional Mutual Aid** – one state to another. A regional mutual aid agreement is one with both local and interstate characteristics – a locality in one state agreeing with a locality in another state (such as the National Capital Region mutual aid agreement involving the District of Columbia, Arlington, Alexandria, and Fairfax Counties, Virginia, and Montgomery and Prince George's Counties, Maryland; or the Mid American Mutual Aid Agreement).

• **International Mutual Aid** – Involves aid from one country to another – e.g., Australia and Canada both provide fire fighting assistance to the U.S. Forest Service in heavy fire fighting years – or between states, provinces, and local governments along the U.S.-Canada or U.S.-Mexico borders

• **NOTE ON INTERNATIONAL MUTUAL AID:** Under the U.S. Constitution, no state may enter into any agreement with a foreign power without the consent of Congress. Article I, Section 10. Many jurisdictions on the border have not sought congressional approval for intergovernmental agreements. While these agreements appear to work well, any provisions providing for liability protection in these agreements might be declared invalid if they were ever scrutinized in litigation.

**General Point:** Recall that for legal purposes, it matters who the employer is. Mutual aid provides potential options for making the employer the entity with strongest liability protections. Thus, in a coordinated response, the response starts at the local level. Local government asks for help from other local governments in state, and then from the state. The state asks for help from other states and the federal government. Each layer of government has the option of hiring/re-assigning/deploying, or contracting for, additional personnel, and then making them available for use by the incident command system in place. In each case, if the work is considered emergency work under the Stafford Act, the federal share of the cost of the personnel would be reimbursed by the federal government later.

## Accessing Emergency Personnel: Deploying Existing State & Local Employees

- Most practical option
  - Public employees already in place, with defined rights, duties and protections
  - Mechanisms for management already in place
- Key questions include
  - How to access these resources in emergencies for requirements outside their daily duties
  - How to address daily duties - scale them back or suspend?



19



The vehicles to use to access existing state and local personnel can be found in the following places:

- The appropriate local/state public health emergency operations plans
- The appropriate local/state Emergency Management - Emergency Operations Plans , especially the Emergency Health & Medical Services Annex (this is often identified as ESF-8, in many, but not all plans)
- These documents might also address any local/state cost sharing requirements
  - Contact the State Offices of Public Health and/or Emergency Management for more details on cost sharing

**Note:** How daily duties are addressed can have a big impact on whether added costs are eligible for federal reimbursement. If the arrangements made are to hire other contract personnel to handle the regular duties, then the cost of the contract will not be reimbursable as an emergency expense, since the contractor's work is not an emergency measure. By contrast, if contractors were hired to handle the emergency work, and the regular employees continued in performing their regular duties (perhaps adding some emergency duties on paid overtime) then all of the cost of providing the emergency services would be reimbursable. There is more on reimbursement issues in Unit 6.

- Preparedness for emergencies includes predetermining the services that are essential as opposed to those that can be scaled back.

## Accessing Emergency Personnel: Deploying Existing Federal Employees

- Also practical option
  - Public employees already in place, with defined rights, duties and protections
  - Mechanisms for management already in place
- To access these employees:
  - Public Health Service employees can be requested of HHS by the state public health department
  - Other Federal employees can be requested by State Emergency Management through FEMA



20



The vehicles to use to access existing federal personnel can be found in the following places:

- The National Response Plan, especially the Emergency Health & Medical Services Annex - ESF-8
- These documents might also address any local/state cost sharing requirements
  - Contact the State Offices of Public Health and/or Emergency Management for more details on cost sharing
- Federal Assets under HHS and the Public Health service do not require a formal declaration for deployment
- Most other federal resources would normally require a federal Stafford Act Declaration or a designation of Incident of National Significance for significant deployments

## Deploying Existing Federal Employees: Public Health Service

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- Public Health Service Commissioned Corps and Reserve Corps
  - Federal employees in other jobs – “activated” for response to public health threats
  - Deployed through HHS



21



Instructor's Note, State/Local Laws: *Instructor may substitute slide with information from particular state.*

**Note:** Instructors may modify this slide to reflect specific emergency hiring authorities in their state.

- A federal employee licensed to practice in one state is permitted to practice medicine in any other state.
- This cross-licensing applies to both full-time/permanent federal employees and also temporary federal employees.
- Federal government is also responsible for payroll, workman's comp, and liability issues arising from these employees.

## Deploying Existing Federal Employees: National Disaster Medical System

- National Disaster Medical System (NDMS)
  - Federal, state and local health professionals
  - Includes medical (DMAT), nursing (NNRT), veterinary (VMAT), mortuary (DMORT) & pharmacy (NPRT)
  - Trained/equipped for catastrophic health events
  - When activated, become “intermittent” federal employees
  - Hired “in accordance with civil service laws”
  - Activated through DHS/FEMA



22



•The Department of Homeland Security (DHS), through the National Disaster Medical System (NDMS), fosters the development of Disaster Medical Assistance Teams (DMATs). A DMAT is a group of professional and para-professional medical personnel (supported by a cadre of logistical and administrative staff) designed to provide medical care during a disaster or other event. Each team has a sponsoring organization, such as a major medical center, public health or safety agency, non-profit, public or private organization that signs a Memorandum of Agreement (MOA) with DHS. The DMAT sponsor organizes the team and recruits members, arranges training, and coordinates the dispatch of the team.

•To supplement the standard DMATs, there are highly specialized DMATs that deal with specific medical conditions such as crush injury, burn, and mental health emergencies.

•Other teams within the NDMS Section include Disaster Mortuary Operational Response Teams (DMORTs) that provide mortuary services, Veterinary Medical Assistance Teams (VMATs) that provide veterinary services, National Nursing Response Teams (NNRTs) that are available for situations specifically requiring nurses, not full DMATs.

- Such a scenario might include assisting with mass chemoprophylaxis (a mass vaccination program,) or a scenario that overwhelms the nation's supply of nurses in responding to a weapons of mass destruction event.

•Other teams are the National Pharmacy Response Teams (NPRTs) that will be used in situations such as those described for the NNRTs, but where pharmacists, not nurses or DMATs, are needed, and the National Medical Response Teams (NMRTs) are equipped and trained to provide medical care for potentially contaminated victims of weapons of mass destruction.

## Deploying Existing Federal Employees: Defense Department (DoD)

- Base commanders have discretionary authority to protect life & property
  - Limited deployments of uniformed services and equipment may be available through local/state Defense Liaison Officers, where applicable
- Major DoD deployments in emergency situations coordinated through DHS/FEMA
  - DoD maintains liaisons with DHS/FEMA to assist in identifying military assets to assist in major disasters and emergencies



23



- Where an emergency endangers life and federal property, the base commander has discretionary authority to take action as circumstances reasonably justify before receiving official instructions to take such action– see 32 C.F.R. 501.2. Focus of this regulations is on civil disturbances – but authority is not limited.
- Often large bases will have liaisons to their surrounding local/state jurisdictions
  - Limited support from the local bases to the surrounding communities can be requested through these liaison officers at the discretion of the base commanders
  - DoD also has standing Liaisons through many, but not all, State Emergency Management Agencies
    - Limited support from bases within the state can be requested through State Emergency Management
- Large scale support from DoD through DHS/FEMA would normally require a Federal Stafford Act Declaration, a request for DoD assistance from a governor where an incident may ultimately qualify for a Stafford Act Declaration. See Stafford Act § 403(c) or a designation of Incident of National Significance.
- Specific additional authority for use of DoD resources in emergency situations involving Chemical or Biological weapons of mass destruction (jointly exercised with the Attorney General) is found at 10 U.S.C. §382.
- Examples of DoD support to civilian agencies in emergencies and disasters include:
  - Specialized chemical/biological/ radiological response equipment
  - Capability to establish portable field hospitals, as in Hurricane Andrew recovery
  - Satellite imagery; atmospheric dispersion modeling
- A federal employee licensed to practice in one state is permitted to practice medicine in any other state. This cross-licensing applies to both full-time/permanent federal employees and also temporary federal employees.
- The federal government is also responsible for payroll, workman's comp, and liability issues arising from these employees.

## Deploying Existing Federal Employees: Health Professionals in Other Agencies

- **Department of Veterans Affairs**
  - Under Stafford Act, VA hospital facilities and personnel can be directed to assist state and local emergency response efforts
  - VA: 4 Medical Emergency Preparedness Centers
  - To provide hospital care and medical services in an emergency or disaster
- **EPA**
  - Specialized chem/enviro response teams
  - CERCLA/Superfund authority provides for long-term cleanup
  - Activated through National Response Plan Emergency Support Functions



24



**Note:** VA facilities and resources can be used as part of DHS/FEMA response in declared emergencies and major disasters: 42 U.S.C. 402(1) and 502(1): The President may “direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services,) in support of State and local emergency assistance efforts. . . .”

•New Mission of Veteran’s Administration added by Department of Veterans Affairs Emergency Preparedness Act of 2002“, PL 107-287, 2002 HR 3253: 38 USC §7325 applies to four new Medical Emergency Preparedness Centers. This new law specifies as a mission of these four Centers: “(3) In the event of a disaster or emergency referred to in section 1785(b) of this title, to provide such laboratory, epidemiological, medical, or other assistance as the Secretary considers appropriate to Federal, State, and local health care agencies and personnel involved in or responding to the disaster or emergency.”

•This mission could be activated upon (1) declaration under Stafford Act; (2) declaration of a federal public health emergency, or (3) determination that the services from the four Medical Centers would respond to an undeclared public health emergency or allow prepositioning of equipment upon finding a risk of a public health emergency.

•Would normally require a Federal Stafford Act Declaration or a designation of Incident of National Significance for significant deployments of VA resources

•As of March 2003, these Medical Emergency Preparedness Centers had not yet been established, as no appropriations were provided to VA to fund their establishment- source- <http://www.va.gov/OCA/testimony/03mr27RR.rtf>

•VA maintains an Emergency Management Strategic Healthcare Group EMSHG as part of the Veterans Health Administration

•Source <http://www1.va.gov/emshg/docs/EMSHGOverview.ppt>

•EMSHG Mission- EMSHG provides Comprehensive Emergency Management services to the Department of Veterans Affairs, coordinates medical back-up to the Department of Defense, and assists the public via the National Disaster Medical System and the Federal Response Plan

•Assets available to EMSHG include:

- 158 hospitals
- > 800 ambulatory care clinics
- 132 nursing homes
- 40 domiciliary
- 73 home care programs
- 206 counseling centers
- > 15,000 physicians and > 1,000 dentists
- > 55,000 nurses
- > 4,500 pharmacists
- 130,000 other staff

•More information is available at [www.va.gov/EMSHG](http://www.va.gov/EMSHG)

•EPA resources could be requested through either FEMA/DHS – using the same Stafford Act section quoted above – or can act independently under its Environmental Protection Authority



## Accessing Emergency Personnel: Mutual Aid

### What is Mutual Aid?

- Assistance rendered by one government entity to help another government entity respond to emergency conditions
- Tradition – “neighbor helping neighbor”
  - During war of 1812, towns on U.S.–Canada border helped each other put fires out even though their respective countries were at war



25



**Note:** This is a functional definition, not a technical or legal definition.

- In fact, many non-governmental entities – such as electric power companies or hospitals – also have arrangements to supply resources – such as bucket trucks and electric linemen or pharmaceuticals – to their neighbors in duress.
- There is currently a Mutual Aid Agreement between Volunteer Centers in the National Capital Region to provide mutual support in the event of a regional emergency. Also one between VAODs Consortium of Voluntary Organizations Active in Disasters for MD, D.C. and Northern VA
- International Border states and provinces also render mutual aid to each other across international borders.
- Mutual Aid has a long tradition in U.S. History
  - Even in the middle of the War of 1812, when the United States was at war with Britain and therefore with Canada, communities on the border between Maine and Canada would cross the border to help each other put fires out.

**Note:** In our current world of rapid transportation, neighbors can be at a considerable distance from each other – several states away, on the other side of our continent, or even across international borders.

## Mutual Aid: Key Characteristics

1. Generally by written agreement
  - Agreements cover:
    - Activation Procedures
    - Liability, employment and compensation issues
    - Federal reimbursement where appropriate
2. “Voluntary” response
  - Generally, mutual aid agreements do not “guarantee” assistance will be provided
    - Indicates desire to respond when requested, if able
    - Specifies terms/conditions/procedures



26



• Mutual aid can cover a wide range of activities and arrangements between different levels of government. Mutual aid agreements are often authorized by special legislation or negotiated and created between governments.

• For example, in 2004, Congress enacted special legislation to facilitate mutual aid between jurisdictions in the National Capitol Region; these arrangements had been hindered by the significant differences in tort liability in Maryland, the Commonwealth of Virginia, and the District of Columbia. Section 7302 of P.L. 108-458, \_\_ Stat \_\_ 2004 (Intelligence Reform and Terrorism Prevention Act of 2004). The statutory solution here was to provide that the law and court system of a responder’s home jurisdiction would apply to lawsuits against the responder and his or her employing jurisdiction.

• A key aspect of mutual aid agreements is that they do not require that assistance be provided. No government can commit to send resources elsewhere in advance without knowing whether those resources will be needed to handle its own problems instead.

## Mutual Aid: Key Characteristics

### 3. Compensated vs. donated

- Most current mutual aid agreements do not provide for compensation or direct reimbursement for small-scale incidents
- In most mutual aid agreements applicable to major responses, requesting jurisdiction reimburses the costs of the responding jurisdiction

### 4. Legal status of mutual aid agreements

- Are legally enforceable



27



•Some mutual aid agreements do not provide for compensation. These agreements normally cover small scale incidents requiring limited resources and a relatively short duration. For emergency response, however, the cost of providing extensive resources over an extended period of time becomes very significant.

•If the activities performed under a mutual aid agreement are emergency measures that would otherwise be eligible for federal reimbursement under the Stafford Act, then the costs charged under the mutual aid agreement would also be reimbursable – but only if the mutual aid agreement is in writing and requires compensation. See FEMA Public Assistance Policy No. 9523.6, “Mutual Aid Agreements for Public Assistance.” (September 22, 2004).

•Litigation over mutual aid agreements is rare. Most cases have involved employees injured during a response, as a result of legal uncertainty over whether workman’s compensation limitations applied and which jurisdiction was responsible.

•In the absence of dispute resolution provisions in the mutual aid agreement, disputes between requesting and responding jurisdictions may be litigated in a court with jurisdiction over the parties and subject matter. For example, original jurisdiction over disputes between states is in the United States Supreme Court.

•EMAC provides that any employee of responding jurisdiction is deemed to be licensed in the requesting jurisdiction.

## Intrastate Mutual Aid

- At least 27 states have formal “intrastate” emergency management compacts
- Draft “Model Intrastate Mutual Aid Agreement” available to states
- Most communities also have “operational” mutual aid agreements for day-to-day cooperation
  - These agreements do not contemplate compensation; may have other liability provisions



28



**Note:** National Emergency Management Association has developed a Model Intrastate Mutual Aid Agreement to assist states in reviewing their existing legislation. <http://emacweb.org/docs/NEMA%20Proposed%20Intrastate%20Model-Final.pdf>

- Per that document, 27 states had formal agreements as of February 2004
- Those states include: AL, AZ, CT, FL, GA, HI, IL, IN, IA, LA, MD, MI, MO, MS, NE, NH, NC, OH, OR, RI, SC, TX, VT
- 5 Additional states had proposed compacts in their legislature during February 2004, including: AL, CO, KY, NV, WI
- An additional 4 states and 1 territory were drafting a proposal before their legislature as of 2/04, including: DE, NM, NY, OK & VI
- Intrastate Compact applies to mutual aid provided by governmental entities within the state (for example: city to city; county to city, county to county, etc.)
- Draft Model Intrastate Mutual Aid Agreement is available to states
  - When enacted, this provides a written mutual aid agreement covering local communities when a governor declares an emergency
  - Includes compensation provisions

## Interstate Mutual Aid: The Emergency Management Assistance Compact

- “EMAC”
  - Approved by Congressional legislation in 1996
  - Adopted by 48 states and territories, with implementing legislation
- Assistance under EMAC triggered
  - By state declaration of emergency
  - Request for assistance made by a member state
  - Request routed to other member state(s) to fulfill the assistance



29



**Note:** Interstate compacts require the consent of Congress under the U.S. Constitution. This approval was provided in 1996. PL 104-321, October 19, 1996, 110 Stat 3877.

- The two states that have not yet adopted EMAC are Hawaii and California.
- Under a Federal Stafford Act Declaration, EMAC requests are coordinated through EMAC personnel at JFO, if appropriate
- A National Incident Management System is being developed for describing clearly the different kinds of resources that can be provided under mutual aid agreements – to assure that the responding jurisdiction knows exactly what resources are being requested.
- This initiative is called “resource typing” and is being conducted in coordination with the member states of EMAC.
- EMAC provides that any employee of responding jurisdiction is licensed in the requesting jurisdiction.

## Interstate Mutual Aid: EMAC Cost Sharing

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- Requesting state pays costs to “responding state”
  - Labor costs, material costs, contractor costs
- Federal government will reimburse costs paid to ‘responding state’
  - If President declared an emergency under Stafford Act AND
  - Costs are eligible “emergency measures”



30



**Note:** Interstate compacts require the consent of Congress under the U.S. Constitution. This approval has been provided PL 104-321, October 19, 1996, 110 Stat 3877.

## Accessing Emergency Personnel: Volunteers

- Types of Volunteers
  - Professional
  - Traditional affiliated
  - Spontaneous from within the affected area
  - Spontaneous from outside the affected area



31



**Instructor:** *This may be a good opportunity to develop discussion on the types of volunteers that emerge in emergencies – and the potential issues in terms of qualifications, credentialing, coordination, record keeping, etc. when dealing with people who are unfamiliar to you.*

•**Professional:** This includes emergency personnel from jurisdictions outside the disaster area. Professional personnel are certified or licensed, and include physicians, EMTs, nurses, and fire fighters, among others. Often regulatory agencies within the affected area may waive or relax certification requirements when there is a need for these professions.

•**Traditional affiliated:** These volunteers are attached to a recognized volunteer agency. They are pre-trained for disaster response and form the core of the cadre of non-professional volunteers.

•**Spontaneous from within the affected area:** These volunteers feel motivated by community ownership. They have no affiliation with any volunteer organizations and may have no formal training or relevant skills.

•**Spontaneous from outside the affected area:** These volunteers do not have a prior affiliation with a recognized volunteer agency and they may or may not have relevant skills.

## Accessing Emergency Personnel: Planning for Volunteers

- State/local gov't must be prepared to handle influx of volunteers from both legal and operational standpoints
- NRP & most state Emergency Operations Plans have a Volunteer Management Annex covering:
  - How to request volunteers from standard channels
  - How volunteers will be used
  - How to establish staging area/volunteer center
  - How to verify skills, licensing, privileges and credentials, particularly from out of state



32



**Note:** Often the Volunteer Management Annex will be combined with donation management into a Volunteer and Donations Management Annex.

- The D.C. District Response plan has this as ESF-15
- Standard channels to request volunteers include:
  - American Red Cross
  - VOADs: National & state agencies that coordinate Voluntary Organizations Active in Disaster
  - COADs: Local agencies similar to VOADs that coordinate Community Organizations Active in Disaster
  - Volunteer Centers: Organizations who recruit volunteers for selected tasks. They also can act as intake and management organizations for Spontaneous Volunteers
- Licenses – a license to practice medicine provided by the state. A state may waive licensing requirements, or establish cross licensing as in EMAC
- Privileges – hospitals give privileges to physicians to work in their hospital. A doctor can be licensed in a state but not have been awarded privileges to practice in a particular hospital
- Credentials – is a term that refers to the badges or other systems used to ensure that a particular person is authorized to be part of the response team – may specify what the person's licenses/qualifications are for particular tasks
- Many organizations, including the NIMS Integration Center and CDC, are working on improving systems for licensing and credentialing responders in emergencies



## Accessing Emergency Personnel: Hiring New State Employees

- Advance planning is key: will need systems in place to handle employment issues fast
- State responsible for hiring, supervision, workman's compensation, termination
  - What emergency hiring procedures are available in state?
- State law generally allows waiver of requirement for state medical license



33



**Instructor's Note, State/Local Laws:** *Instructor may substitute slide with information from particular state, including specific emergency hiring authorities.*

- Liability is limited:
  - Most states limit liability for actions taken in emergencies to gross negligence/willful misconduct
  - State employees are generally protected from personal liability
- State government may hire medical or other personnel, although in Florida:
  - The Florida Emergency Management Act vests in the Governor (or his delegate) the following powers:
    - The authority to suspend the effect of any statute, rule, ordinance, or order of any state, regional, or local governmental entity as needed to cope with the disaster; to direct all state, regional and local governmental agencies, including law enforcement agencies; to confiscate any private property needed to meet the disaster; to order the evacuation of all persons from any part of the State and regulate the movement of persons and traffic within the State; and to re-delegate his powers to subordinates by the designation of one or more Deputy State Coordinating Officers and Alternate Authorized Representatives to act in his absence. 14 Fla. Stat, 252.36, 252.43, and 252.46 (2004).
    - The declaration directs the State Coordinating Officer to activate the State-wide Comprehensive Emergency Management Plan, to invoke the Statewide Mutual Aid Agreement and Emergency Management Assistance Compact, and to distribute all supplies stockpiled for emergencies. See FL Stat, 252.36(3)(a), 252.36(3)(b) (2004).
- State law generally allows waiver of the requirement for a state medical license
  - Model Emergency Powers Act:
    - "Public health authority may waive any and all licensing requirements, permits, or fees required by the State Code and applicable orders, rules or regulations for health care providers from other jurisdictions"
  - Advance planning is key. Will need systems in place to expedite employment issues.

## Hiring New State Employees: Florida Example

- Florida Emergency Management Act vests Governor with power to handle emergencies by:
  - Suspending any state/local law or regulation
  - Directing all state & local agencies
  - Confiscating needed private property
  - Ordering evacuations
  - Re-delegate any of this authority to specific subordinates



34



**Instructor's Note, State/Local Laws:** *Please add State/Local Specifics when designing a State/Local course, including specific emergency hiring authorities.*

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  - Advance planning is key. Will need systems in place to expedite employment issues.

## Accessing Emergency Personnel: Contracting For Services

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- Contracting for services is another method to arrange for resources
- Many states allow for expedited contracting under declared emergencies
- Consult qualified attorney and/or state procurement officer for state specifics



35



- General Services Administration (GSA) Schedules are standing contract vehicles that can be accessed:
  - In very short time frames
  - Without bidding if within certain constraints
  - With simplified procurement vehicles

**Note:** There are other vehicles that could allow for states to contract through GSA on a daily basis.

## Accessing Emergency Personnel: Priority Contracts for Services

### *FEDERAL AUTHORITY*

- Where preexisting contractual obligations preclude a private service provider from providing goods or services
  - Defense Production Act authorizes federal government to require a private company to enter into contract and to give priority to that contract over all other existing contracts
  - Potential use: Contracting with care providing organizations
- Consult with legal counsel



36



We discussed the Defense Production Act in a little more detail previously in Unit 4, when we were talking about facilities.

- As stated in Unit 4, this is a powerful authority that has not previously been used for Public Health Emergency Management purposes
- The use of the DPA without consent of the contracting party is frequently controversial
- Use under consultation with legal counsel
- One of the principal benefits of the DPA is to provide protection to a contractor contractually committed to deliver products to another company pursuant to a schedule which makes the contractor unable to provide resources required for response to an emergency. This authority was used – not without controversy – to direct deliveries of natural gas into California during the spike in prices several years ago.
- Defense Production Act authority can be used when a finding is made that use is necessary for national defense.
- National defense is defined in the Act to include emergency preparedness under the Stafford Act's Title VI.
- Title VI of the Stafford Act includes a definition of emergency preparedness which includes all activities in preparing for, responding to, and recovering from catastrophic events. Stafford Act § 602(a)(3)

## Accessing Emergency Personnel via Defense Production Act

- Applications for priority contracting of Public Health resources should be made to Secretary of HHS (EO 12919)
- Contract must be found “necessary for national defense” or “emergency preparedness” by Secretary DHS
- Act protects against liability for breach of contracts delayed by compliance with the priority order



37



•Where preexisting contractual obligations preclude a private service provider from providing goods or services, the Defense Production Act authorizes the federal government to require a private company to enter into contract, and to give priority to that contract over all other existing contracts.

•Cannot be used for personal services, for example, specific individuals in place of hiring as employees

•Can be used for contracts with corporations (e.g. HMOs, for-profit hospitals, medial service providers) that provide health services.

## Objective 5.3

**Understand How Potential Legal  
and Practical Limitations Might  
Affect Use of Emergency Sources  
of Personnel**



38



## Emergency Sources of Personnel: Potential Legal Issues

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- What limitations must be addressed to obtain emergency personnel?
- What licensing issues must be addressed?
- Who is the employer?
- Who is responsible for errors/injuries?



39



**Instructor:** *These questions must be addressed to reduce or avoid potential legal issues impacting use of emergency personnel.*

- The question “who is the employer?” must be asked, along with those covering other logistical issues, including:
  - Who cuts the pay checks?
  - Who is responsible for payroll taxes, workmen’s compensation?
  - Who is responsible for errors/injuries?

## Addressing Limitations: Obtaining Emergency Personnel

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- Malpractice
- Volunteer Protection Act of 1977
- Good Samaritan laws
- Federal/state employees
- EMAC
- Voluntary NGOs



40



- Liability protection will be covered in detail later in this unit.
- Addressing these limitations, however, reduces potential for liability and risk.



## Minimizing Liability: Actions in Emergencies

- Medical care during public health emergency events will be provided to the best extent capable.....but

### **ERRORS WILL OCCUR MALPRACTICE WILL BE ALLEGED**

- Both state and federal laws recognize importance of providing protection from liability for those acting in good faith during emergencies



41



**Note:** In any environment, there is always the possibility of an error, whether intentional or not.

- Using triage systems, under time pressure, in emergency facilities, by medical teams working extended hours without previously having worked together, without access to all specialists, all can result in errors.
- These errors will bring about lawsuits, whether meritorious or not.
- While there is protection under federal and state laws for emergency situations, these laws still leave liability gaps and exposures.

## Minimizing Liability: Volunteer Protection Act of 1977

- Federal law preempts state laws
- No liability for volunteer of any non-governmental organization or government if:
  - Work performed within volunteer's scope of duties
  - Volunteer is properly licensed
  - Volunteer had no criminal or willful misconduct
- The Non-Government Organization (NGO) or government remains liable for acts of volunteers



42



**Instructor's Note, State/Local Laws:** *Instructor should adapt slide to reflect the law in the state of presentation.*

Federal Volunteer Protection Act preempts state laws:

- § 14502. Preemption and election of state non-applicability: (a) Preemption. This chapter preempts the laws of any state to the extent that such laws are inconsistent with this chapter, except that this chapter shall not preempt any state law that provides additional protection from liability relating to volunteers or to any category of volunteers in the performance of services for a nonprofit organization or governmental entity.

## Minimizing Liability Example: State Good Samaritan Laws – Florida

- A person is not liable for civil damages arising out of care or treatment, in emergency situations, including declared emergencies **IF** care is provided...
  - “**gratuitously**” and “**in good faith**”
  - “**without objection**” of the injured victim or victims thereof,
  - acting “as an **ordinary reasonably prudent person** would have acted under the same or similar circumstances”
- Protection also extended for actions coordinated with organized emergency management teams and agencies



43



Instructor's Note, State/Local Laws: *Instructor should adapt slide to reflect the law in the state of presentation.*

•Excerpts from Florida's Good Samaritan Law:

- Construction and Application of Good Samaritan Statutes, 8 A.L.R. 4th 294, provides an extensive discussion of cases construing Good Samaritan Laws in 29 states, and the potential liability that exists when the legislative criteria of “gratuitously”, “in good faith”, “without objection” “acting as an ordinary reasonable prudent person” are not met. 8 A.L.R.4th 294
- Protection expanded for actions coordinated with organized Emergency Management teams and agencies:
  - “Any person ... who participates in emergency response activities under the direction of or in connection with local emergency response teams or agencies, the State, or FEMA provided gratuitously in such capacity, if such person acts as a reasonably prudent person would have acted under the same or similar circumstances.

## Minimizing Liability Example: Good Samaritan Law – Virginia

- *When engaged in emergency services activities, the following are not liable for death or any injury to persons or property as a result of such services:*
  - *the Commonwealth, or any political subdivision thereof,*
  - *federal agencies,*
  - *other public or private agencies,*
  - *except in cases of willful misconduct*
- *Private persons with professional licenses have protection only if services are “gratuitous”*



44



Instructor's Note, State/Local Laws: *Instructor should adapt slide to reflect the law in the state of presentation.*

- Slide excerpts from Virginia's Good Samaritan Law, VA Stat. 44.146-23:
- Hawaii may have one of the broadest immunity/Good Samaritan statutes:
  - "128-18 Immunities; rights. (a) Neither:
    - (1) The State;
    - (2) Any political subdivision of the State;
    - (3) Any public utility or vital facility;
    - (4) Private agencies or entities; nor
    - (5) Except in cases of willful misconduct, persons engaged in civil defense functions pursuant to this chapter (including volunteers whose services are accepted by any authorized person), shall be civilly liable for the death of or injury to persons, or property damage, as a result of any act or omission in the course of the employment or duties under this chapter.

## Minimizing Liability: Good Samaritan Laws - Summary

- Provisions/liability exposure varies by state
- Very low liability exposure:
  - Volunteers, government employees
- Liability: persons receiving compensation - not government employee



45



Instructor's Note, State/Local Laws: *Instructor should adapt slide to reflect the law in the state of presentation.*

•Some liability:

- Employers are generally liable for workmen's compensation if an employee is injured
- Federal and state governments are liable if sovereign immunity has been waived.

## Minimizing Liability: Using Federal Employees

- Legal risks to state officials limited when using federal employees:
  - Federal government responsible for training, credentialing, licensing
  - Federal government handles payroll, payroll taxes
  - Federal Workman's Compensation provision applies for injuries to personnel
  - Federal liability protections under Federal Tort Claims Act



46



- Federal liability protections:

- Federal Tort Claims Act - No punitive damages
- Non-liability for discretionary actions under Stafford Act

- N.D.M.S. 42 USC § 300hh-11 (d)(2) Liability:

For purposes of [section 233\(a\)](#) of this title and the remedies described in such section, an individual appointed under paragraph (1) shall, while acting within the scope of such appointment, be considered to be an employee of the Public Health Service performing medical, surgical, dental, or related functions. With respect to the participation of individuals appointed under paragraph (1) in training programs authorized by the Assistant Secretary for Public Health Emergency Preparedness or a comparable official of any Federal agency specified in subsection (b)(2)(B) of this section, acts of individuals so appointed that are within the scope of such participation shall be considered within the scope of the appointment under paragraph (1) (regardless of whether the individuals receive compensation for such participation).

**Note:** Federal resources are massive, but only small advance teams may arrive in the first several days.

## Minimizing Liability: EMAC Licensing & Liability Issues

- Licensing of professionals
  - *If a “person” is licensed in responding state, the person “shall be deemed” licensed in requesting state*
  - *Unless requesting governor orders otherwise*
- Liability/compensation provisions
  - *“Officers and employees” of responding state are “agents” of requesting state*
  - *Responding state and its “officers and employees” not liable for actions in good faith*
  - *Compensation and death benefits for “members of emergency forces” of a state are paid by the employing state – whether responding or requesting*



47



**Exception:** Liability of responding state exists in event of willful misconduct, gross negligence, or recklessness.

**Note:** Most malpractice insurance policies cover malpractice incurred in the practice of the insured physician. There is substantial doubt that the policy covers any actions performed by a physician when not practicing in the manner described in the application for insurance, but rather when participating in an emergency response (in a different facility or even a different city or state, perhaps working for a government or non-profit entity or as a volunteer).

## Addressing Limitations: Voluntary NGOs

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- Some paid staff work for volunteer-based NGOs
- Paid NGO personnel may not be covered by same Good Samaritan protection applicable to persons who serve for no fee



48



- Often, paid personnel are contracted with the organization
  - Such contracting agreements should specify compensation, liability, and credentialing/licensing



## Key Takeaways - Summary

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- Legal, logistical and management issues are paramount in staffing for disaster response
- Preparation is key – Consult qualified attorney in advance of the next emergency



49



- Logistical/management issues are paramount in staffing for disaster response
  - Identifying the skills/capabilities required
  - Identifying where they should be assigned
  - Developing procedures for hiring, contracting, supervising, credentialing, supporting
  - Coordinating with the Joint Field Office to assure reimbursement
- Preparation is key – consult a qualified attorney in advance of the next emergency regarding:
  - Where the resources are
  - What legal protections/constraints apply to these resources
  - Creating the necessary agreements to use them.

## *Hypothetical Example (Cont.) What Can Go Wrong Now . . .*

- Response is moving along into recovery, but...
- Miscommunication is leading to injuries and lawsuits
- After several weeks, several private hospitals report cash flow crisis, refuse patients
- Audit of municipal hospitals disallows reimbursement of cost of treating patients



50



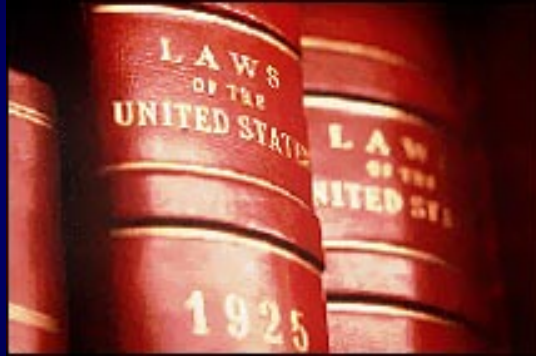
• Miscommunication issues are leading to lawsuits:

- Lawsuit filed by estate of health worker over public statements made on health risks
- Lawsuit filed by prison inmate who was paralyzed after becoming infected while being quarantined.

## End: Unit 5

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information on  
public health law  
visit the *CDC  
Public Health  
Law Program*



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